IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 25155 of 2004

Between:

Kumati Attaluri Subramanyam Setty @ A. Subramanyam, S/o. A.

Seshaiah Setty, R/o. 13-77-1, Main Rao, Veldurthy, Veldurty

Mandal, Kurnool District.

..... PETITIONER

AND

1 The Station House Officer, Veldurthy Police Station, Kurnool District.
2 The Deputy Commissioner of Prohibition & Excise, Nampally,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in not producing the seized property as contemplated under section 46 of Excise, Act, as illegal, arbitrary and violative of Provisions of Excise Act, and consequently direct the 1st respondent to release the vehicle Swaraj mazda bearing No. AP21V8019 and to pass such other order or orders.

Counsel for the Petitioner: MR.K.V.CHALAPATHI RAO

Counsel for the Respondents No.1 and 2: GP FOR HOME & GP for Prohibition & Excise

The Court at the stage of admission made the following ORDER:

Petitioner is a trader at Veldurthy village of Kurnool district. He holds the requisite licenses and permissions from the agencies concerned. On 10.11.2004, the first respondent, the Station House Officer, Veldurthy Police Station, along with his staff, seized a light commercial vehicle (Swaraj Mazda) bearing No. AP 21 B 8019, on the ground that it was used in transporting black jaggery. Crime No.115 of 2004 was registered on the same day.

The petitioner claims that the first respondent does not have any power or jurisdiction to effect seizure of the vehicle as well as the jaggery, since no crime under the provisions of the Indian Penal Code can be said to have been committed. He also contends that even assuming that there is any violation of the provisions of the A.P. Excise Act (for short 'the Act'), it is for the officials of the Excise Department and not the first respondent to effect any seizure. According to him, the first respondent deliberately produced the vehicle along with the seized goods before the Judicial Magistrate of First Class, Dhone, though the competent authority under the Act and the Rules made there under is the second respondent.

The petitioner filed Crl.M.P.No.3144 of 2004 before the Court of Judicial Magistrate of First Class, Dhone for release of the vehicle. The petition was dismissed, on the ground that the competent authority to deal with the matter is

the second respondent. The order was affirmed by the Court of the II Additional Sessions Judge, Kurnool in C.R.P.No.57 of 2004. Hence, this writ petition.

Heard learned counsel for the petitioner, learned Government Pleader for Prohibition & Excise and learned Government Pleader for Home.

On the face of it, the action of the first respondent in seizing the vehicle and black jaggery is high-handed and arbitrary. Black jaggery as such is not a contraband or prohibited commodity. It is only when the same is found to be used or attempted to be used in the manufacture of illicit liquor that it can be seized, that too, by the officials of the Excise Department. The first respondent has absolutely nothing to do with the matter.

Further, the first respondent registered a case against the petitioner under Section 34(a) of the Act. He ought to have known that the competent authority to deal with such cases is the second respondent. Institution of proceedings against the petitioner before the Judicial Magistrate of First Class, Dhone was nothing but a deliberate and mischievous act on his part. The petitioner was denied the relief because of the deliberate mischief played by the first respondent. Even after the trial Court passed an order, dated 18.10.2004, directing the first respondent to produce the vehicle before the second respondent, no steps were taken. The counter-affidavit filed by the Assistant Sub-Inspector of Police is rather irresponsible and evasive.

On account of the illegal and arbitrary action of the first respondent and his subordinates, the petitioner was put to hardship and irreparable loss. This Court thought of imposing heavy costs against the first respondent and the Assistant Sub-Inspector of Police who are present before this Court. However, they tendered un-conditional apology and assured this Court that such instances will not be permitted to recur. The same is taken on record and they are let off with a warning to ensure that such instances do not recur.

The vehicle is said to have been since produced before the second respondent. The writ petition is disposed of leaving it open to the petitioner to seek release of the same by filing an application before the second respondent. The second respondent shall consider and take appropriate action on the application filed by the petitioner without any loss of time and not later than one week from today. There shall be no order as to costs.

04.02.2005

Note:

Issue CC in three days.

(BO)

ksld

To

1 The Station House Officer, Veldurthy Police Station, Kurnool District.
2 The Deputy Commissioner of Prohibition & Excise, Nampally,

Hyderabad.

3 Two CCs. to the G.P. for Prohibition & Excise, High Court of A.P.,

Hyderabad(OUT)

4 Two CCs. to the G.P.for Home, High Court of A.P., Hyderabad

(OUT).

5 Two CD copies.